

K. England. — Laws and Statutes. — IV. Marine Insurance

(1)

Anno 43. Elizabethæ Reginae.

C H A P. XII.

Commissions awarded to bear and determine Policies of Assurances made among Merchants, and the Commissioners Authority.

WHereas it ever hath been the Policy of this Realm by all good means to comfort and encourage the Merchant, thereby to advance and increase the general Wealth of the Realm, Her Majesties Customs, and the strength of Shipping; which Consideration is now the more requisite, because Trade and Traffick is not at this present so open as at other times it hath been: And whereas it hath been time out of mind an usage amongst Merchants, both of this Realm and of Foreign Nations, when they make any great Adventure, (especially into remote parts) to give some consideration of Money to other persons (which commonly are in no small number) to have from them Assurance made of their Goods, Merchandize, Ships, and things adventured, or some part thereof, at such rates and in such sort, as the parties Assurers and the parties Assured can agree; which course of dealing is commonly termed, A Policy of Assurance. By means of which Policies of Assurance it cometh to pass, upon the loss or perishing of any Ship, there followeth not the undoing of any man, but the Loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than those that do adventure; whereby all Merchants, especially of the younger sort, are assured to venture more willingly and more freely. And whereas heretofore such Assures have used to stand so justly and precisely upon their Credits, as few or no Controversies have risen thereupon; and if any have grown, the same have from time to time been ended and ordered by certain grave and discreet Merchants appointed by the Lord Major of the City of *London*, as men by reason of their Experience fittest to understand, and speedily to decide those Causes, until of late years that divers persons have withdrawn themselves from that Arbitrary course, and have sought to draw the parties Assured to seek their Moneys of every several Assurer by Suits commenced in Her Majesties Courts, to their great charges and delays. For remedy whereof be it Enacted by the Authority of this present Parliament, That it shall and may be lawful for the Lord Chancellor or Lord Keeper of the Great Seal of *England* for the time being, to award forth under the Great Seal of *England* one general or standing Commission, to be renewed yearly at the least, and otherwise so oft as unto the said Lord Chancellor or Lord Keeper shall seem good, for the hearing and determining of Causes arising and Policies of Assurances, such as now are, or hereafter shall be entered within the Office of Assurances within the City of *London*, and whereof no Suit shall be depending the last day of this Session of Parliament in any of Her Majesties Courts. Which Commission shall be directed to the Judge of the Admiralty for the time being, the Recorder of *London* for the time being, two Doctors of the Civil Law, and two Common Lawyers, and eight grave and discreet Merchants, or to any five of them: Which Commissioners, or the greater part of them which shall sit and meet, shall have by vertue of this present Act full Power and Authority to hear, examine, order, and decree all and every such Cause and Causes concerning Polices of Assurances, in a brief and summary course, as to their discretion shall seem meet, without Formalities of Pleadings or Proceedings.

And be it further Enacted by the Authority aforesaid, That it shall be lawful for the said Commissioners as well to warn any of the Parties to come before them, as also to examine upon Oath any Witness that shall be produced, and to commit

to prison without Bail or Mainprife any person that shall wilfully contemn or disobay their final Orders or Decrees. And that the said Commissioners shall once every week at the least meet, and sit upon the Execution of the said Commission in the Office of the Assurances, or in some other convenient publick place by them to be Assigned. And that no person by vertue of this Act may claim or exact any Fee, for any matter or cause concerning the Execution of the said Commission.

And be it further Enacted by the Authority aforesaid, That if any person shall be grieved by Sentence or Decree of the said Commissioners, that such person so grieved may at any time within two Months of the said Decree so made, exhibit his Bill into the High Court of Chancery for the re-examination of such Decree; so as every person complainant, before he shall exhibit any such Bill, do either execute and satisfie the said Sentence so awarded, or at least lay down *in deposito* with the said Commissioners, such Sums of Money as he shall be awarded to pay, and that upon so doing the said Complainant shall be enlarged of his Imprisonment. And that the Lord Chancellor or Lord Keeper for the time being shall have full Power and Authority by vertue of this Act, upon every complaint made in order as aforesaid, to reverse or affirm every such Sentence or Decree, according to equity and conscience. And that the said Lord Chancellor or Lord Keeper, in every Suit brought before him as aforesaid by such Assurers, and Decreed against the said Assurers, shall award double costs to the party assured.

Provided nevertheless, That no Commissioner shall intermeddle in the Execution of any such Commission in any cause or matter of Assurance, where himself shall be either a party Assurer or Assured, in the same Assurance which is brought in question. Nor that any Commissioner (other than the said Judge of the Admiralty, and the Recorder of *London*) shall deal or proceed in the Execution of any such Commission, before he have taken his corporal Oath before the Lord Major and Court of Aldermen of the City of *London*, to proceed uprightly and indifferently between party and parry.

Anno 14. Caroli II. Regis.

An Additional Act concerning matters of Assurances used amongst Merchants.

WHereas by an Act of Parliament made in the three and fortieth Year of the Reign of Queen *Elizabeth*, (of happy Memory) Entituled, *An Act concerning matters of Assurances used amongst Merchants*, the Parliament then taking into consideration, by all good means to comfort and encourage the Merchants of this Kingdom, thereby to advance and increase the Wealth of this Realm, Her Majesties Customs, and the strength of Shipping, and for preventing of divers mischiefs in the said Act mentioned, it was Enacted, That it should and might be lawful for the Lord Chancellor or Lord Keeper of the Great Seal of *England* for the time being, to award forth under the Great Seal of *England*, one general or standing Commission to be renewed yearly at the least, and otherwise so often, as unto the Lord Chancellor or Lord Keeper should seem meet, for the hearing and determing of Causes arising on Polices of Assurance, such as then were or then after should be entered within the Office of Assurance of the City of *London*; which Commissions should be directed to the Judge of the Admiralty for the time being, the Recorder of *London* for the time being, two Doctors of the Civil Law, two Common Lawyers, and eight grave or discreet Merchants, or any five of them; which Commissioners, or the greater part of them which should sit and meet, should have full Power and Authority to hear, examine, order, and decree, all and every such Cause and Causes, in a brief and



and summary course, without formalities of Pleadings or Proceedings, with power to warn Parties to come before them, and to examine upon Oath any Witnesses that should be produced, and to commit to Prison any person that should wilfully disobey their final Orders and Decrees. And the Commissioners to sit once weekly upon the Execution of the said Commission; with a liberty in the said Act for any person grieved by any such Sentence or Decree, to exhibit his Bill in Chancery for the re-examination of such Sentence or Decree, as by the said Act (relation being thereunto had) more at large may appear. But foreasmuch as by the said recited Act, without five Commissioners there cannot be a Court, and without there be a Court they cannot proceed in the Execution of their Commission, so much as to summon Parties or Witnesses to appear: And in case of neglect or refusal of any Party or Witness to appear, they have no power to punish the delay or contempt with costs or otherwise. And it is provided by the said Act, That not any Commissioner, other than the Judge of the Admiralty, or the Recorder of *London*, shall proceed in the Execution of such Commission, before he hath taken his Oath before the Lord Major and Court of Aldermen, to proceed uprightly and indifferently between Party and Party, which upon the renewing of the said Commissions often proves a great delay, there being so many Commissioners to be sworn, and the Court of Aldermen not sitting at some times in the Year, when the said Commissions have happened to be renewed: And although the said Commissioners upon their final Sentence have power to commit to prison any person that shall wilfully disobey their said Sentence or Decrees, yet they have no power to make any Order against the Ship or Goods which commonly are the things assured, by which Omissions or want of power given by the said Act, the Benefits intended by the Act of Parliament are much retarded, and the Mischiefs by the Act endeavoured to be prevented much increased.

For remedy whereof be it Enacted and Ordained, and it is hereby Enacted and Ordained by the Kings most Excellent Majesty, and by and with the advise and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled: That from and after the four and twentieth day of *June*, which shall be in the year of our Lord one thousand six hundred sixty and two, it shall and may be lawful to and for the Lord Chancellor or Lord Keeper of the Great Seal of *England* for the time being to issue out yearly, (or oftner if need require) one standing Commission under the great Seal of *England*, thereby empowering and authorising the said Commissioners, or any three of them, (whereof a Doctor of the Civil Law, or a Barister at Law of five years standing at the least, to be always one) to meet and sit, and make a Court, and proceed in all things in the Execution of the said Commission, as before by the said Act any five might have done. And that the said Commissioners, or any such three of them as aforesaid, be and hereby are impowred to summon Parties and Witnesses to appear, and in case of contempt or wilful delay in the Witnesses, upon the first Summons and tender of reasonable charges, and in the Parties upon their second Summons, to punish the Offenders by Imprisonment or Cost, for such time and in such manner as shall be reasonable, and according to the nature and quality of their Offences. And that it shall and may be lawful to and for every such Commissioner, to proceed in the Execution of the said Commission, having first taken an Oath before the Lord Major of the City of *London* for the time being only, to proceed uprightly and indifferently between Party and Party: And the said Lord Major is hereby authorized to give such Oath, any thing in the said Act to the contrary notwithstanding. And that no person shall proceed in the Execution of the said Commission, before he be first sworn before the Lord Major of *London* for the time being, to proceed uprightly and indifferently between Party and Party, as formerly he should have been before the Lord Major and Court of Aldermen.

Be it also Enacted by the Authority aforesaid, That in case the Commissioners, or any such three of them as aforesaid, shall find cause to Examine Witnesses beyond the Seas; or any remote parts of His Majesties Dominions, for the clearing
of

of any doubt or matter before them depending; that in such case by direction of the said Commissioners or any such three of them, like Commissions or Procefs shall issue out of the Court of Admiralty, as have formerly been for the purposes aforesaid, returnable before the said Commissioners. And that the said Commissioners, or any such three of them, shall have also power to give and pass their final Sentence, Decree and Execution, as well against the Body of the Party evicted or his Goods, as also against the Executors and Administrators of such Party so evicted; and to assess Costs of Suit upon such person or persons as shall be condemned by the Decree of the said Court, as to them shall seem just.

And forasmuch as many Witnesses (as Seamen and others) come and speedily go again to Sea, before a Court can be summoned, by which means the Assured and Assurers are many times much damnified: For the preventing of which mischief be it also Enacted by the Authority aforesaid, That it shall and may be lawful to and for any one of the said Commissioners to Administer an Oath to any Witness legally summoned to give Testimony, (timely notice being thereof given to the adverse Party, and set up in the Office before such Examination) to the end such Witness or Witnesses may be cross-examined.

Provided always, That the said Commissioners shall in no case proceed both against Person and Goods for one and the same Debt. And provided also, That any thing in this Act contained shall not in any wise extend to prejudice the Appeal to the High Court of Chancery, given or allowed in the said former Act of Parliament.

Anno 16. Caroli II. Regis.

AND be it Enacted, and is hereby Enacted by the Authority aforesaid, That all Tenders of Money, or Payment thereof, which by any Bonds, Covenants, or other Obligations or Assurance whatsoever, ought to be made in the late Assurance Office, or in any other place on the late Royal Exchange London, shall or may be made of or in the present Assurance Office, *Gresham-House*. And it shall be as valid and legal to all intents and purposes, and discharge the Obligor as fully and amply, as if they had been made, in the first intended place on the said Royal Exchange.



